

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 CHRISTOPHER MCINTYRE,

12 Plaintiff,

13 v.

14 DAN CLUZEL, *et al.*,

15 Defendants.

16 Case No. C05-5799RJB

17 REPORT AND
18 RECOMMENDATION TO DENY
19 APPLICATION TO PROCEED *IN*
20 *FORMA PAUPERIS*

21 Noted for March 31, 2006

22 This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. §
23 636(b)(1) and Local MJR 3 and 4. Plaintiff has filed a civil rights complaint under 42 U.S.C. § 1983 and
24 an application to proceed *in forma pauperis*. To file a complaint and initiate legal proceedings, plaintiff
25 must pay a filing fee of \$250.00 or file a proper application to proceed *in forma pauperis*. Because
26 plaintiff has failed to respond to the court's order to show cause, the undersigned recommends the court
27 deny her application.

28 DISCUSSION

29 The court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper
30 affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the court has broad discretion in denying an
31 application to proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), *cert. denied*,
32 375 U.S. 845 (1963). Several district courts have ruled that denial of *in forma pauperis* status is not
33 unreasonable when the plaintiff is able to pay the initial expenses required to commence a lawsuit. *See*

1 Temple v. Ellerthorpe, 586 F.Supp. 848 (D.R.I. 1984); Braden v. Estelle, 428 F.Supp. 595 (S.D.Tex.
2 1977); U.S. ex rel. Irons v. Com. of Pa., 407 F.Supp. 746 (M.D.Pa. 1976); Shimabuku v. Britton, 357
3 F.Supp. 825 (D.Kan. 1973), *aff'd*, 503 F.2d 38 (10th Cir. 1974); Ward v. Werner, 61 F.R.D. 639 (M.D.Pa.
4 1974).

5 On December 6, 2005, the clerk received plaintiff's complaint. (Dkt. #1). On December 20, 2006,
6 the clerk sent plaintiff a letter informing him that he needed to either pay the \$250.00 court filing fee or file
7 a proper application to proceed *in forma pauperis* by January 19, 2006, or his complaint could be subject
8 to dismissal. (Dkt. #2). Because plaintiff did not respond to the clerk's letter by that date, on January 23,
9 2006, the court ordered plaintiff to pay the court filing fee or cure the deficiencies in his application to
10 proceed *in forma pauperis* by no later than February 23, 2006, or show cause why this matter should not
11 be dismissed. (Dkt. #3). To date, however, plaintiff has failed to respond to either the clerk's letter or the
12 court's order.

CONCLUSION

Because plaintiff has failed to respond to the court's order to show cause regarding his need to pay the court filing fee or file a proper application to proceed *in forma pauperis*, the undersigned recommends the court dismiss plaintiff's complaint unless he pays the required \$250.00 filing fee **within thirty (30) days** of the court's order.

Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rules of Civil Procedure (“Fed. R. Civ. P.”) 72(b),
the parties shall have ten (10) days from service of this Report and Recommendation to file written
objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit
imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set this matter for consideration on **March 31,**
2006, as noted in the caption.

24 Dated this 7th day of March, 2006.

John L. Thompson

Karen L. Strombom
United States Magistrate Judge